

## §457.118

election of \$65.00 per ton. Due to adverse weather you were only able to harvest 50.0 tons. Your indemnity would be calculated as follows:

1. 100 acres type A × 3 tons = 300 ton guarantee;
- 2 & 3. 300 tons × \$65 price election = \$19,500 total value guarantee;
- 4 & 5. 50 tons production to count × \$65 price election = \$3,250 total value of production to count;
6. \$19,500 value guarantee—\$3,250 = \$16,250 loss; and
7. \$16,250 × 100 percent share = \$16,250 indemnity payment.

### *Example 2*

Assume you also have a 100 percent share in 100 acres of type B forage in the same unit, with a guarantee of 1.0 ton per acre and a price election of \$50.00 per ton. Due to adverse weather you were only able to harvest 5.0 tons. Your total indemnity for forage production for both types A and B in the same unit would be calculated as follows:

1. 100 acres × 3 tons = 300 ton guarantee for type A; and 100 acres × 1 ton = 100 ton guarantee for type B;
2. 300 ton guarantee × \$65 price election = \$19,500 total value of the guarantee for type A; and 100 ton guarantee × \$50 price election = \$5,000 total value of the guarantee for type B;
3. \$19,500 + \$5,000 = \$24,500 total value of the guarantee;
4. 50 tons × \$65 price election = \$3,250 total value of production to count for type A; and 5 tons × \$50 price election = \$250 total value of production to count for type B;
5. \$3,250 + \$250 = \$3,500 total value of production to count for types A and B;
6. \$24,500—\$3,500 = \$21,000 loss; and
7. \$21,000 loss × 100 percent share = \$21,000 indemnity payment.

(c) The total production to count (in tons) from all insurable acreage on the unit will include:

- (1) All appraised production as follows:
  - (i) Not less than the production guarantee per acre for acreage:
    - (A) That is abandoned;
    - (B) Put to another use without our consent;
    - (C) Damaged solely by uninsured causes; or
    - (D) For which you fail to provide production records that are acceptable to us;
  - (ii) Production lost due to uninsured causes;
  - (iii) Unharvested production;
  - (iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agree-

## 7 CFR Ch. IV (1–1–03 Edition)

ment on the appraised amount of production is not reached and:

(A) You do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) You elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) When forage is harvested as other than air-dry forage, the production to count will be adjusted to the equivalent of air-dry forage.

(e) Any harvested production from plants growing in the forage will be counted as forage on a weight basis.

(f) In addition to the provisions of section 15 (Production Included in Determining Indemnities) of the Basic Provisions (§457.8), we may determine the amount of production of any unharvested forage on the basis of our field appraisals conducted after the normal time for each cutting for the area.

### 11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 14285, Mar. 26, 1997, as amended at 62 FR 65169, Dec. 10, 1997; 65 FR 3783, Jan. 25, 2000; 65 FR 11457, Mar. 3, 2000]

## §457.118 Malting barley crop insurance.

The malting barley crop insurance provisions for the 1996 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

*Small Grains Crop Insurance Malting Barley Price and Quality Endorsement*

(This is a continuous endorsement. Refer to section 2 of the Common Crop Insurance Policy.)

In return for your payment of premium for the coverage contained herein, this endorsement will be attached to and made part of the Common Crop Insurance Policy (§457.8) and Small Grains Crop Provisions (§457.101),

subject to the terms and conditions described herein.

1. You must have the Common Crop Insurance Policy (§457.8) and the Small Grains Crop Insurance Provisions (§457.101) in force to elect to insure malting barley under this endorsement.

2. You must select either Option A or Option B on or before the sales closing date. Failure to select either Option A or Option B, or if you elect Option B but fail to have a malting barley contract in effect by the acreage reporting date, will result in no coverage under this endorsement for the applicable crop year. If you elect coverage under Option A, and subsequently enter into a malting barley contract, your coverage will continue under the terms of Option A. Your selection (Option A or B) will continue from year to year unless you cancel or change your selection on or before the sales closing date.

3. You must select either an additional value price election or a percentage of the maximum additional value price election on or before the sales closing date. The percentage of the maximum additional value price election you select does not have to be the same as that selected under the Small Grains Crop Provisions for feed barley. In the event that you choose a percentage of the maximum additional value price election, we will multiply that percentage by the maximum additional value price election specified in Option A or B to determine the additional value price election that pertains to your contract.

4. The additional premium amount for this coverage will be determined by multiplying your malting barley production guarantee per acre by your selected additional value price election, times the premium rate stated in the Actuarial Table, times the acreage planted to approved malting barley varieties, times your share at the time coverage begins.

5. In addition to the reporting requirements contained in section 6 of the Common Crop Insurance Policy (§457.8), you must provide the information required by the Option you select.

6. In lieu of the provisions regarding units and unit division in the Common Crop Insurance Policy (§457.8) and the Small Grains Crop Provisions (§457.101), all barley acreage in the county that is planted to malting varieties that is insurable under the Small Grains Crop Provisions for feed barley and your selected Option must be insured under this endorsement and will be considered as one unit regardless of whether such acreage is owned, rented for cash, or rented for a share of the crop. The producer's shares in the malting barley acreage to be insured under this endorsement must be designated on the acreage report.

7. In lieu of the provisions in the Common Crop Insurance Policy (§457.8) that requires us to pay your loss within 30 days after we reach agreement with you, whenever any production fails one or more of the quality criteria specified herein, the claim may not be settled until the earlier of:

(a) The date you sell, feed, donate, or otherwise utilize such production for any purpose; or

(b) May 31 of the calendar year immediately following the calendar year in which the insured malting barley is normally harvested.

If the production meets all quality criteria contained herein or grades U.S. No. 4 or lower in accordance with the grades and grade requirements for the subclasses Six-rowed and Two-rowed barley, and for the class Barley in accordance with the Official United States Standards for Grain, the claim will be settled within 30 days in accordance with the Common Crop Insurance Policy (§457.8).

8. This endorsement does not provide additional prevented planting coverage. Such coverage is only provided in accordance with the provisions of the Small Grain Crop Provisions for feed barley.

9. Production from all acreage insured under this endorsement and any production of feed barley varieties must not be commingled prior to our making all determinations necessary for the purposes of this insurance. Failure to keep production separate may result in denial of your claim for indemnity.

10. Definitions:

(a) *APH*. Actual production history as determined in accordance with 7 CFR part 400, subpart G.

(b) *Approved malting variety*. A variety of barley specified as such in the Special Provisions.

(c) *Brewery*. A facility where malt beverages are commercially produced for human consumption.

(d) *Contracted production*. A quantity of barley the producer agrees to grow and deliver, and the buyer agrees to accept, under the terms of the malting barley contract.

(e) *Licensed grain grader*. A person authorized by the U.S. Department of Agriculture to inspect and grade barley under the U.S. Standards for malt barley.

(f) *Malting barley contract*. An agreement in writing between the producer and a brewery or a business enterprise that produces or sells malt or processed mash to a brewery, or a business enterprise owned by such brewery or business, that contains the amount of contracted production, the purchase price, or a method to determine such price, and other such terms that establish the obligations of each party to the agreement.

(g) *Objective test.* A determination made by a qualified person using standardized equipment that is widely used in the malting industry, and following a procedure approved by the American Society of Brewing Chemists when determining percent germination or protein content; grading performed by following a procedure approved by the Federal Grain Inspection Service when determining quality factors other than percent germination or protein content; or by the Food and Drug Administration when determining concentrations of mycotoxins or other substances or conditions that are identified as being injurious to human or animal health.

(h) *Subjective test.* A determination made by a person using olfactory, visual, touch or feel, masticatory, or other senses unless performed by a licensed grain grader; or that uses non-standardized equipment; or that does not follow a procedure approved by the American Society of Brewing Chemists, the Federal Grain Inspection Service, or the Food and Drug Administration.

(i) *Unit.* All insurable acreage of approved malting varieties in the county on the date coverage begins for the crop year.

Option A—(Available for Producers of Production Contracted After the Sales Closing Date, Non-Contracted Production, or a Combination of Contracted and Non-Contracted Production)

This option provides coverage for malting barley production and quality losses at a price per bushel greater than that offered under the Small Grains Crop Provisions.

1. To be eligible for coverage under this option, you must provide us acceptable records of your sales of malting barley and the number of acres planted to malting varieties for at least the four crop years in your APH database prior to the crop year immediately preceding the current crop year. For example, to determine your production guarantee for the 1996 crop year, records must be provided for the 1991 through the 1994 crop years, if malting barley varieties were planted in each of those crop years. Failure to provide acceptable records or reports as required herein will make you ineligible for coverage under this endorsement. You must provide these records to us no later than the production reporting date specified in the Common Crop Insurance Policy (§ 457.8).

2. Your malting barley production guarantee per acre will be the lesser of:

(a) The production guarantee for feed barley for acreage planted to approved malting varieties calculated in accordance with the Small Grains Crop Provisions and APH regulations; or

(b) A production guarantee calculated in accordance with APH procedures using the malting barley sales and acreage records provided by you.

3. The additional value price per bushel elected cannot exceed the maximum price designated in the Special Provisions.

4. The amount of production to count against your malting barley production guarantee will be determined as follows:

(a) Production to count will include all:

(1) Appraised production determined in accordance with sections 11(c)(1) (i) and (ii) of the Small Grains Crop Provisions;

(2) Harvested production and potential unharvested production that meets, or would meet if properly handled;

(i) Tolerances established by the Food and Drug Administration or other public health organization of the United States for substances or conditions, including mycotoxins, that are identified as being injurious to human health; and

(ii) The following quality standards, as applicable:

	Six-rowed malting barley (percent)	Two-rowed malting barley (percent)
Protein (dry basis)	14.0 maximum	14.0 maximum
Plump kernels	65.0 minimum	75.0 minimum
Thin kernels	10.0 maximum	10.0 maximum
Germination	95.0 minimum	95.0 minimum
Blight damaged	4.0 maximum	4.0 maximum
Injured by mold	5.0 maximum	5.0 maximum
Mold damaged	0.4 maximum	0.4 maximum
Sprout damaged	1.0 maximum	1.0 maximum
Injured by frost	5.0 maximum	5.0 maximum
Frost damaged	0.4 maximum	0.4 maximum

(3) Harvested production that does not meet the quality standards contained in section 4(a)(2) of this Option, but is accepted by a buyer for malting purposes. For such production, the production to count may be reduced or the price used to settle the claim may be adjusted in accordance with sections 4 (b), (c), and (d) of this Option.

(b) The quantity of production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley (except production included in section 4(c)), may be reduced as described in this subsection, provided the failure of such production to meet these standards is due to insurable causes. The production to count of production sold under section 4(a)(3) will be determined by:

(1) Adding the maximum barley price election under the Small Grains Crop Provisions and the maximum additional value price;

(2) Dividing the price per bushel received for the damaged production by the result of paragraph (1); and

(3) Multiplying the result of paragraph (2) (not to exceed 1.000) by the number of bushels of damaged production.

(c) The production to count for production that initially fails any quality standard contained in section 4 (a)(2), sold as malting barley, but is conditioned before the sale will not be reduced under section 4(b). Such production will be considered separately from

all other production to count. (See section 5(d).)

(d) The additional value price election per bushel used to determine the value of the production to count for production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley, may be reduced by the cost incurred for any conditioning required to improve the quality of production so that it is marketable as malting barley, provided the failure of such production to meet these standards is due to insurable causes.

(e) No reduction in the production to count or the additional value price election will be allowed for moisture content, damage due to uninsured causes; costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in section 4(a)(2) of this Option; or any other costs associated with normal handling and marketing of malting barley.

(f) All grade and quality determinations must be based on the results of objective tests. No indemnity will be paid for any loss established by subjective tests. We may obtain one or more samples of the insured crop and have tests performed at an official grain inspection location established under the U.S. Grain Standards Act or laboratory of our choice to verify the results of any test. In the event of a conflict in the test results, our results will determine the amount of production to count.

5. In the event of loss or damage covered by this policy, we will settle your claim by:

(a) Multiplying the insured acreage times your malting barley production guarantee per acre;

(b) Multiplying the result in subsection (a) of this section times your additional value price election per bushel;

(c) Multiplying the number of bushels of production to count determined in accordance with sections 4(a) and (b) of this Option times your elected additional value price per bushel;

(d) Multiplying the production to count determined under section 4(c) of this Option times the additional value price per bushel determined in section 4(d) of the Option;

(e) Adding the results of subsections (c) and (d) of this section;

(f) Subtracting the result of subsection (e) of this section from the result in subsection (b); and

(g) Multiplying the result of subsection (f) of this section times your share.

6. For example, assume you insure two units of barley under the Small Grains Crop Provisions in which you have a 100% share and that are planted to approved malting varieties. Assume the following:

(a) Each unit contains 40 acres;

(b) You have sold an average of 20 bushels per acre of malting barley for each of the last 6 years;

(c) You have selected the 70 percent coverage level;

(d) Your production guarantee under the Small Grains Crop Provisions and the APH regulations for feed barley is 30 bushels per acre;

(e) Your total production from all units under the Small Grains Crop Provisions is 1,000 bushels, all of which fails to meet the quality standards specified by this Option. Two hundred bushels are sold for malting purposes after conditioning. Conditioning costs are \$0.05 per bushel; and

(f) Your additional value price election is \$0.40 per bushel.

Your malting barley production guarantee is 1120.0 bushels (the lesser of 20 or 30x70 percent coverage level x80 acres). The value of your production guarantee is \$448.00 (1120 bushels x\$0.40 per bushel). Your production to count is 200 bushels. The value of your production to count is \$70.00 (200 bushels x\$0.35 (\$0.40—\$0.05)). Your indemnity for the malting barley unit is \$378.00 ((\$448.00—\$70.00) x100 percent share). Any remaining loss is paid under the Small Grains Crop Provisions for feed barley.

#### OPTION B—(AVAILABLE FOR PRODUCERS OF CONTRACTED PRODUCTION ONLY)

This option provides coverage for malting barley production and quality losses at a price per bushel greater than that offered under the Small Grains Crop Provisions provided you have a malting barley contract.

1. If you elect this option you must provide us a copy of your malting barley contract on or before the acreage reporting date. All terms and conditions of the contract, including the contract price or futures contract premium price, must be specified in the contract and be effective on or before the acreage reporting date. If you fail to timely provide the contract, or any terms are omitted, we may elect to determine the relevant information necessary for insurance under this Option (B), or deny liability. Only contracted production or acreage is covered by this Option (B).

2. Your malting barley guarantee per acre will be the lesser of:

(a) The production guarantee for feed barley for acreage planted to approved malting barley varieties calculated in accordance with the Small Grains Crop Provisions and APH regulations; or

(b) The number of bushels obtained by:

(1) Dividing the number of bushels of contracted production by the number of acres planted to approved malting varieties in the current crop year; and

(2) Multiplying the result by the percentage for the coverage level you elected under the Small Grains Crop Provisions.

3. The additional value price election per bushel will be the lesser of, as applicable:

§ 457.118

7 CFR Ch. IV (1-1-03 Edition)

(a) The guaranteed sale price per bushel established in the malting barley contract (without regard to discounts or incentives that may apply) minus the maximum price election for feed barley; or

(b) The premium price per bushel (without regard to discounts or incentives) if the sale price is based on a future market price as specified in the malting barley contract.

Under no circumstances will the additional value price election per bushel exceed \$2.00 per bushel.

4. The amount of production to count against your malting barley production guarantee will be determined as follows:

(a) Production to count will include all:

(1) Appraised production determined in accordance with sections 11(c)(1) (i) and (ii) of the Small Grains Crop Provisions;

(2) Harvested production and potential unharvested production that meets, or would meet if properly handled, the minimum acceptance standards contained in the malting barley contract for protein, plump kernels, thin kernels, germination, blight damage, mold injury or damage, sprout damage, frost injury or damage, and mycotoxins or other substances or conditions identified by the Food and Drug Administration or other public health organization of the United States as being injurious to human health, or the following quality standards as applicable:

	Six-rowed malting barley	Two-rowed malting barley
	(percent)	(percent)
Protein (dry basis)	14.0 maximum	14.0 maximum
Plump kernels .....	65.0 minimum	75.0 minimum
Thin kernels .....	10.0 maximum	10.0 maximum
Germination .....	95.0 minimum	95.0 minimum
Blight damaged ....	4.0 maximum	4.0 maximum
Injured by mold .....	5.0 maximum	5.0 maximum
Mold damaged .....	0.4 maximum	0.4 maximum
Sprout damaged ...	1.0 maximum	1.0 maximum
Injured by frost .....	5.0 maximum	5.0 maximum
Frost damaged .....	0.4 maximum	0.4 maximum

(3) Harvested production that does not meet the quality standards contained in section 4(a)(2) of this Option, but is accepted by a buyer for malting purposes. For such production, the production to count may be reduced or the price used to settle the claim may be adjusted in accordance with sections 4 (b), (c), and (d) of this Option.

(b) The quantity of production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley (except production included in section 4(c)), may be reduced as described in this subsection, provided the failure of such production to meet these standards is due to insurable causes. The production to count of production sold under section 4(a)(3) will be determined by:

(1) Adding the maximum barley price election under the Small Grains Crop Provisions and the maximum additional value price;

(2) Dividing the price per bushel received for the damaged production by the result of paragraph (1); and

(3i) Multiplying the result of paragraph (2) (not to exceed 1.000) by the number of bushels of damaged production.

(c) The production to count for production that initially fails any quality standard contained in section 4(a)(2), sold as malting barley, but is conditioned before the sale will not be reduced under section 4(b). Such production will be considered separately from all other production to count. (See section 5(d).)

(d) The additional value price election per bushel used to determine the value of the production to count for production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley, may be reduced by the cost incurred for any conditioning required to improve the quality of production so that it is marketable as malting barley, provided the failure of such production to meet these standards is due to insurable causes.

(e) No reduction in the production to count or the additional value price election will be allowed for moisture content, damage due to uninsured causes; costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in section 4(a)(2) of this Option; or any other costs associated with normal handling and marketing of malting barley.

(f) All grade and quality determinations must be based on the results of objective tests. No indemnity will be paid for any loss established by subjective tests. We may obtain one or more samples of the insured crop and have tests performed at an official grain inspection location established under the U.S. Grain Standards Act or laboratory of our choice to verify the results of any test. In the event of a conflict in the test results, our results will determine the amount of production to count.

5. In the event of loss or damage covered by this policy, we will settle your claim by:

(a) Multiplying the insured acreage times your malting barley production guarantee per acre;

(b) Multiplying the result in subsection (a) of this section times your additional value price election per bushel;

(c) Multiplying the number of bushels of production to count determined in accordance with sections 4 (a) and (b) of this Option times your elected additional value price per bushel;

(d) Multiplying the production to count determined under section 4(c) of this Option times the additional value price per bushel determined in section 4(d) of the Option;

(e) Adding the results of subsections (c) and (d) of this section;

(f) Subtracting the result of subsection (e) of this section from the result in subsection (b); and

(g) Multiplying the result of subsection (f) of this section times your share.

6. For example, assume you insure two units of barley under the Small Grains Crop Provisions in which you have a 100% share and that are planted to approved malting varieties. Assume the following:

(a) Each unit contains 40 acres;

(b) You have a contract for the sale of 2500 bushels of malting barley;

(c) You have selected the 70 percent coverage level;

(d) Your production guarantee under the Small Grains Crop Provisions and the APH regulations for feed barley is 35 bushels per acre;

(e) Your total production from all units under the Small Grains Crop Provisions is 1,000 bushels, all of which fails to meet the quality standards specified by this Option. Two hundred bushels are sold for malting purposes after conditioning. Conditioning cost \$0.05 per bushel; and

(f) Your additional value price election is \$0.60 per bushel.

Your malting barley production guarantee is 1750.0 bushels (the lesser of 35 or 21.875 (2500 contracted bushels ÷ 80 acres × 70 percent coverage) × 80 acres). The value of your production guarantee is \$1050.00 (1750 bushels × \$0.60 per bushel). Your production to count is 200 bushels. The value of your production to count is \$110.00 (200 bushels × \$0.55 (\$0.60 - \$0.05)). Your indemnity for the malting barley unit is \$940.00 ((\$1050.00 - \$110.00) × 100 percent share). Any remaining loss is paid under the Small Grains Crop Provisions for feed barley.

[61 FR 8855, Mar. 6, 1996; 61 FR 27245, May 31, 1996]

#### §457.119 Texas citrus fruit crop insurance provisions.

The Texas citrus fruit crop insurance provisions for the 2000 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

*Texas Citrus Fruit Crop Provisions*

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

#### 1. Definitions

*Crop.* Specific groups of citrus fruit as listed in the Special Provisions.

*Crop year.* The period beginning with the date insurance attaches to the citrus crop and extending through the normal harvest time. It is designated by the calendar year following the year in which the bloom is normally set.

*Direct marketing.* Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

*Excess rain.* An amount of precipitation that damages the crop.

*Excess wind.* A natural movement of air that has sustained speeds exceeding 58 miles per hour recorded at the U. S. Weather Service reporting station operating nearest to the grove at the time of damage.

*Freeze.* The formation of ice in the cells of the tree, its blossoms, or its fruit caused by low air temperatures.

*Harvest.* The severance of mature citrus fruit from the tree by pulling, picking, or any other means, or by collecting marketable fruit from the ground.

*Hedged.* A process of trimming the sides of the citrus trees for better or more fruitful growth of the citrus fruit.

*Interplanted.* Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

*Local market price.* The applicable citrus price per ton offered by buyers in the area in which you normally market the insured crop.

*Production guarantee (per acre):*

(a) *First stage production guarantee.* The second stage production guarantee multiplied by forty percent (40%).

(b) *Second stage production guarantee.* The quantity of citrus (in tons) determined by multiplying the yield determined in accordance with section 3 by the coverage level percentage you elect.

*Ton.* Two thousand (2,000) pounds avoirdupois.

*Topped.* A process of trimming the uppermost portion of the citrus trees for better and more fruitful growth of the citrus fruit.

*Varieties.* Subclasses of crops as listed in the Special Provisions.

#### 2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each citrus crop designated in the Special Provisions.